

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

NORTHWEST ADMINISTRATORS,
INC.,

No. C-10-02938 JCS

Plaintiff,

v.

**REPORT AND RECOMMENDATION RE
PLAINTIFF'S MOTION FOR DEFAULT
JUDGMENT AND ATTORNEYS' FEES [Docket
No. 15]**

PAUL'S DAIRY DISTRIBUTOR, INC.,

Defendant.

I. INTRODUCTION

In this enforcement action brought under the Employee Retirement Income Security Act ("ERISA"), Plaintiff brings a Motion for Default Judgment and Attorneys' Fees ("the Motion") seeking entry of default judgment, an award of unpaid fringe benefit contributions, liquidated damages, interest, attorneys' fees and costs. For the reasons stated below, it is recommended that Plaintiff's Motion be GRANTED and that Plaintiff be awarded \$39,709.04 in damages.

II. BACKGROUND

Plaintiff is the administrator of the Western Conference of Teamsters Pension Trust Fund ("the Trust Fund"), acting on behalf of the trustees of the Trust Fund. Complaint, ¶ 2. The Trust Fund is organized pursuant to § 302 of the Labor Management Relations Act, 29 U.S.C. § 186(c). *Id.* Plaintiff alleges that Defendant, Paul's Dairy Distributor, Inc. ("Paul's Dairy"), is bound by a written collective bargaining agreement with the Teamsters Local Union No. 853 ("the Collective Bargaining Agreement") and that under the Collective Bargaining Agreement, Defendant was required to make contributions to the Trust Fund on behalf of its employees. *Id.*, ¶ 5; *see also*

1 Declaration of Walt Pentz in Support of Motion for Default Judgment (“Pentz Decl.”), Ex. 1
2 (Collective Bargaining Agreement between Paul’s Dairy and Teamsters Local Union No. 853),
3 section 16-17; Ex. 2 (Employer-Union Pension Certification binding Defendant to terms of Trust
4 Agreement).

5 Under the Trust Agreement, an employer is required to submit monthly reports listing work
6 performed by covered employees, as well as the pension benefit contributions due. Pentz Decl., Ex.
7 3, Article IV, section 1. Contributions are due on the tenth day of the following month and become
8 delinquent after that date. *Id.* In the case of delinquent contributions, the Trust Agreement provides
9 for liquidated damages of 20% of the amount due and unpaid, as well as an award of attorneys’ fees
10 and costs incurred in collecting the delinquent contributions. *Id.*, section 3(b)(2) & (3). These
11 amounts become due and payable on the tenth day following the date on which the Administrator
12 mails notice of the delinquency to the employer. *Id.*, section (c). Finally, the Trust Agreement
13 provides for an award of interest at the underpayment rate set forth in 26 U.S.C. § 6621. *Id.*, section
14 3(d).

15 In the Complaint, Plaintiff alleged that Defendant had failed to timely pay required
16 contributions under the Trust Agreement since March 2010. Complaint, ¶ 8. Plaintiff further
17 alleged that it was entitled to liquidated damages and interest for the months of March 2010 through
18 May 2010, as well as unpaid contributions for the months of April and May 2010. *Id.* Plaintiff
19 further alleged that Defendant had received notice of the delinquencies. Complaint, ¶ 9; Pentz Decl.,
20 Ex. 4 (notice of delinquency).

21 Plaintiff filed this action on July 2, 2010. Defendant did not appear and default was entered
22 on September 28, 2010. Plaintiff now brings a default judgment motion, in which it seeks to recover
23 the following amounts, based on unpaid contributions for the months of April 2010 through
24 December 2010: 1) \$31,684.95 in unpaid contributions; 2) \$6,336.99 in liquidated damages; and 3)
25 \$542.10 in interest. Supplemental Declaration of Diane Andrade in Support of Motion for Default
26 Judgment (“Andrade Supp. Decl.”), Ex. 8. In addition, Plaintiff requests \$740.00 in attorneys’ fees;
27 and \$425.00 in costs. Declaration of Michael J. Carroll in Support of Motion for Default Judgment
28 (“Carroll Decl.”), ¶¶ 2, 5.

1 III. ANALYSIS

2 A. Entry of Default Judgment

3 Plaintiff has applied for a default judgment in this action on the basis that Defendant has
 4 failed to appear after valid service. Under Federal Rule of Civil Procedure 55(b)(2), the court may
 5 enter a default judgment where the clerk, under Rule 55(a), has already entered the party's default
 6 based upon a failure to plead or otherwise defend the action. The district court's decision to enter a
 7 default judgment involves some discretion. *Lau Ah Yew v. Dulles*, 236 F.2d 415 (9th Cir. 1956)
 8 (affirming district court's denial of default judgment). The court is free to consider a wide range of
 9 factors in deciding whether to enter a default judgment, including: "(1) the possibility of prejudice to
 10 the plaintiff, (2) the merits of plaintiff's substantive claim, (3) the sufficiency of the complaint, (4)
 11 the sum of money at stake in the action, (5) the possibility of a dispute concerning material facts, (6)
 12 whether the default was due to excusable neglect, and (7) the strong policy underlying the Federal
 13 Rules of Civil Procedure favoring decisions on the merits." *Eitel v. McCool*, 782 F.2d 1470, 1471-
 14 72 (9th Cir. 1986); *see also* Wright & Miller, *Federal Practice and Procedure*, Civil § 2685.

15 Where a default judgment is deemed appropriate, the factual allegations of the complaint,
 16 except those relating to damages, are taken as true. *Geddes v. United Fin. Group*, 559 F.2d 557, 560
 17 (9th Cir. 1977) (citing *Pope v. United States*, 323 U.S. 1, 12 (1944)). So long as the allegations in
 18 the complaint are "well-pleaded," liability is established as to those allegations by the default. *Trans*
 19 *World Airlines Inc. v. Hughes*, 308 F. Supp. 679, 683 (D.C.N.Y. 1969), *modified on other grounds*,
 20 449 F.2d 51, *rev'd on other grounds*, 409 U.S. 363 (1973).

21 Plaintiff brings this action under ERISA. Under ERISA, a trustee is authorized to bring a
 22 civil enforcement action to recover unpaid contributions from an employer who is bound to make
 23 such contributions under a collective bargaining agreement. *See* 29 U.S.C. § 1132(a)(3) (authorizing
 24 fiduciary of employee benefit plan to bring a civil action to enforce provisions of ERISA); § 1145
 25 (providing that "[e]very employer who is obligated to make contributions to a multiemployer plan
 26 under the terms of the plan or under the terms of a collective bargaining agreement shall . . . make
 27 such contributions"); § 1002(14) (defining fiduciary as including trustees).

28 In support of its ERISA claim, Plaintiff alleges that Defendant entered into a collective

1 bargaining agreement requiring it to make contributions to the Trust Fund on behalf of its covered
 2 employees. Plaintiff further alleges that Defendant failed to pay contributions while bound by the
 3 collective bargaining agreement. These allegations state a valid claim under ERISA. In addition,
 4 Plaintiff has supported the claim by providing copies of the Trust Agreement, the Collective
 5 Bargaining Agreement, the Employer-Union Pension Certification binding Defendant to the terms of
 6 Trust Agreement, the Employer Contribution Reports for the relevant months and the notice of
 7 delinquency that was sent to Defendant. Based on the record before it, the Court concludes that
 8 default judgment should be entered against Defendant.

9 **B. Requested Relief**

10 **1. Section 1132(g)**

11 Once liability is established in a default situation, a plaintiff must then establish that the
 12 requested relief is appropriate. *Geddes*, 559 F.2d at 560. Under ERISA, § 1132(g) provides for
 13 statutory damages where a multi-employer plan successfully sues under 29 U.S.C. § 1145 (providing
 14 that “[e]very employer who is obligated to make contributions to a multiemployer plan under the
 15 terms of the plan or under the terms of a collective bargaining agreement shall . . . make such
 16 contributions in accordance with the terms and conditions of such plan or such agreement”). A plan
 17 that obtains judgment in its favor in an action for unpaid contributions under § 1145 is entitled to:

18 (A) the unpaid contributions,

19 (B) interest on the unpaid contributions

20 (C) an amount equal to the greater of–

21 (1) interest on the unpaid contributions, or

22 (2) liquidated damages provided for under the plan in an amount not in excess
 23 of 20 percent . . . of the amount determined by the court under subparagraph

24 (A),

25 (D) reasonable attorney’s fees and costs of the action, to be paid by the defendant, and

26 (E) such other legal or equitable relief as the court deems appropriate.

27 29 U.S.C. § 1132(g)(2).
 28

2. Contributions

Defendants seek a total of \$31,684.95 in unpaid contributions for the months of April 2010 and through December 2010. This request is supported by declarations by the manager of the trust fund delinquency collection department, Diane Andrade, as well as the Employer Contribution Reports that were submitted by Defendant for the relevant months. *See* Declaration of Diane Andrade in Support of Motion for Default Judgment (“Andrade Decl.”), Exs. 5 & 6 (April 2010 through August 2010); Andrade Supp. Decl., Exs. 8 & 9 (September 2010 through December 2010). This evidence supports Plaintiff’s request for unpaid contributions, which should be awarded in full.

3. Liquidated Damages

Plaintiff seeks liquidated damages in the amount of \$6,336.99, calculated for all late payments at a rate of 20%. Andrade Decl., ¶ 4 & Ex. 5; Andrade Supp. Decl., ¶ 5 & Ex. 8. Plaintiff has provided the relevant provision of the Trust Agreement (see above) and has calculated the amount of liquidated damages correctly. Therefore, it is recommended that the amount of liquidate damages requested by Plaintiff be awarded in full.

4. Interest

Plaintiff seeks an award of interest on the unpaid contributions in the amount of \$542.10 This amount is calculated using an interest rate of 4%, starting from the date each contribution became delinquent to February 11, 2011, the scheduled motion hearing date. *See* Andrade Decl., ¶ 5; Andrade Supp. Decl., ¶ 6. Plaintiff’s calculation is consistent with the terms of the Trust Agreement, which specifies that interest shall be awarded at the annual underpayment rate under 26 U.S.C. § 6621, starting on the date the contribution became delinquent. During the relevant period, the annual underpayment rate was 4%. *See* www.irs.gov/pub/irs-drop/rr-10-31.pdf. Therefore, the interest requested by Plaintiff should be awarded in full.

5. Attorneys’ Fees and Costs

Having prevailed in this action for unpaid and late contributions, Plaintiff is also entitled to reasonable attorneys’ fees and costs of the action. 29 U.S.C. § 1132(g)(2)(D).

a. Attorneys' Fees

In this Circuit, the starting point for determining reasonable fees is the calculation of the "lodestar," which is obtained by multiplying the number of hours reasonably expended on litigation by a reasonable hourly rate. *See Jordan v. Multnomah County*, 815 F.2d 1258, 1262 (9th Cir. 1987). In calculating the lodestar, the Court must determine a reasonable rate and a reasonable number of hours for each attorney. *Chalmers v. City of Los Angeles*, 796 F.2d 1205, 1210 (9th Cir. 1986), *reh'g denied, amended on other grounds*, 808 F.2d 1373 (9th Cir. 1987).

Here, Plaintiff seeks attorneys' fees for 4 hours of work at a rate of \$180.00/hour. *See* Carroll Decl., ¶ 5. The Court finds both the rate and the time spent to be reasonable and recommends that Plaintiff's attorneys' fees be awarded in the amount of \$720.00.¹

b. Costs

Plaintiff seeks \$425.00 for the following costs incurred in prosecuting this action: (1) \$350.00 for the Clerk's filing fee; and (2) \$75.00 for service of the complaint. Carroll Decl., ¶ 2 & Ex. 7. Under Civil Local Rule 54-3 ("Rule 54-3"), an award of costs may include the clerk's filing fee and fees for service of process "to the extent reasonably required and actually incurred." The Court finds that the costs sought by Plaintiff were reasonably required and actually incurred and therefore recommends that these costs be awarded in full.

IV. CONCLUSION

For the reasons stated above, Plaintiff's Motion should be GRANTED and default judgment should be entered against Defendant. Plaintiff should be awarded \$39,709.04 in damages, consisting

¹In the Carroll Declaration, the total amount of fees sought is listed as \$740.00. Carroll Decl. ¶ 5. As the hourly rate and hours worked are clearly set forth in the same declaration, the Court concludes that this is merely a typographical error.

of the following amounts: 1) \$31,684.95 in unpaid contributions; 2) \$6,336.99 in liquidated damages; 3) \$542.10 in interest; 4) \$720.00 in attorneys' fees; and 5) \$425.00 in costs.

DATED: February 11, 2011



JOSEPH C. SPERO
United States Magistrate Judge